

MAY 16 2022

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF TEXAS
 HOUSTON DIVISION

Nathan Ochsner, Clerk of Court

LEGACY CONTRACTORS, LLC
Plaintiff

vs.

A&G REAL ESTATE AND
 CONSTRUCTION SERVICES, INC.
 D/B/A SCG WEST
Defendant

§
§
§
§
§
§
§
§

CIVIL ACTION NO. _____

PLAINTIFF'S ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT

I. Summary of Lawsuit

Plaintiff, LEGACY CONTRACTORS, LLC, (hereinafter "Legacy") seeks declaratory relief from a supposed Confidentiality, Non-Compete, and Non-Circumvent Agreement (hereinafter the "Agreement") entered into with Defendant A&G REAL ESTATE AND CONSTRUCTION SERVICES D/B/A SCG WEST (hereinafter "SCG") which (1) Legacy was not a named party to the Agreement, (2) was procured by fraudulent inducement, and (3) lacks supporting consideration. On multiple occasions, SCG has threatened Legacy with litigation and other threats in an attempt to enforce the wholly invalid non-circumvention portion of the Agreement, and attempts to assert out-of-state California jurisdiction over Legacy, who has absolutely zero contacts with SCG's California or interstate commerce. Thus, this suit seeks to have the Agreement declared null and void as to Legacy.

II. Venue and Jurisdiction

1. Legacy is a limited liability company formed and existing under the laws of the State of Texas and with its principal place of business located at 16000 Barkers Point Lane, Suite 155,

Houston, Harris County, Texas, 77079. Legacy is a commercial general contractor who only performs work in an around the Houston area.

2. SCG is a corporation formed and existing under the laws of the State of California. Its principal place of business is located at 2549 Eastbluff Drive, Suite B-211, Newport Beach, California 92660. According to the California Secretary of State website, SCG may be properly served by and through its agent for service of process: 1505 Corporation 2391, White & Co. CPAs, 20351 Irvine Avenue, Suite C6, Newport Beach, CA 92660. SCG regularly conducts business in the State of Texas, purposefully availing itself to the laws and benefits of Texas, thus invoking general jurisdiction in this forum. Furthermore, the events or activities giving rise to this lawsuit substantially occurred in Texas, thus invoking, in the alternative, specific jurisdiction in this forum.

3. Declaratory relief is sought under 28 U.S.C. § 2201 and § 2202.

III. Facts Supporting Relief

4. On January 31, 2022, Legacy was contacted by Williamsburg Enterprises, the landlord for Wine Vibes, LLC (hereinafter “Wine Vibes”). Williamsburg Enterprises sent Legacy plans and specifications on behalf of Wine Vibes and requested that Legacy provide preliminary pricing to construct a wine bar and bistro to be located in an existing “shell” strip center owned by Williamsburg Enterprises; Legacy’s principals were involved in constructing the strip center in 2019. This strip center and the corresponding wine bar and bistro are and were to be located at 9018 Sienna Crossing Drive, Missouri City, Texas.

5. On February 16, 2022, Legacy provided preliminary pricing to Williamsburg Enterprises, who then forwarded same to Wine Vibes. Then, on February 18, 2022, Wine Vibes contacted Legacy directly, sending additional updated plans and specifications, and requesting updated pricing. **This was the first direct communication between Legacy and Wine Vibes.**

6. On February 28, 2022, Wine Vibes notified Legacy that it sought to involve SCG as its construction manager – a construction manager oversees a general contractor on behalf of the owner/developer, in this case, Wine Vibes. Upon information and belief, Wine Vibes entered into a franchise agreement with WatersEdge Wineries, Inc., a California corporation and, as has been subsequently described to Legacy, the franchise agreement between Wine Vibes and WatersEdge contained a provision whereby Wine Vibes was to use SCG as its construction manager and allow SCG to select the general contractor for the buildout. None of this was known to Legacy at the time it was developing a direct relationship with Wine Vibes and providing pricing for the wine bar and bistro build out.

7. On March 11, 2022, unbeknownst to Legacy, Wine Vibes took the position that SCG was in breach of the terms of the franchise agreement and sought to sever the relationship between Wine Vibes and SCG.

8. Nonetheless, the afternoon of the same day, March 11, 2022, Kyle Gorman of SCG sent Legacy an email – an email which did not copy any Wine Vibes personnel or agents – stating that in order to continue to move forward with procuring a contract for construction, Legacy would need to execute and return a Confidentiality, Non-Compete, and Non-Circumvention Agreement. It was unknown to Legacy at this time that Wine Vibes and SCG's relationship had ended.

9. The Agreement sent to Legacy did not list Legacy as a party to the Agreement but did have a signature line for Legacy:

This Confidentiality, Non-Disclosure and Non-Circumvention Agreement ("*Agreement*") is entered into as of January 27th, 2020 the "*Effective Date*"), by and between A&G Real Estate and Construction Services, Inc. DBA SCGWest, an California corporation, with offices at 18021 Sky Park Circle, Suite L, Irvine, CA 92614 ("*SCG*"), and JDG Architects, a Michigan Company, with an address of: 79 Oakland Avenue Pontiac, MI 48342 ("*Party*")

10. Also, the Agreement contained a clause which attempted to subject Legacy to personal jurisdiction in California. The clause, prior to being struck and redlined by Legacy's counsel, read as follows:

prevailing party shall be entitled to recover its reasonable attorney's fees and costs. This Agreement will be governed by and construed in accordance with the laws of California without reference to conflict of laws principles. Any disputes under this Agreement may be brought in the state courts and the Federal courts located in Orange County, California, and the parties hereby consent to the personal jurisdiction and exclusive venue of these courts.

11. Over the course of several days, all of which occurred after the relationship between SCG and Wine Vibes had terminated, Legacy and SCG contemplated changes to the Agreement. The Agreement was ultimately executed by Legacy on March 14, 2022, and is attached hereto in its entirety as *EXHIBIT A*.

12. The final version of the forum selection clause in the Agreement reads as follows:

for performance. In the event of any dispute arising in any manner with respect to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs. This Agreement will be governed by and construed in accordance with the laws of California. Any disputes under this Agreement may be brought in the state courts and the Federal courts located in Orange County, California..

13. Legacy received no compensation, no additional information, no contracts, and no other documents in exchange for its signature on the Agreement. Rather, Legacy was instructed by SCG that it was to execute the Agreement in order for Legacy to move forward with its independent and preexisting relationship with Wine Vibes.

14. On April 20, 2022, Legacy was notified via email by Kyle Gorman of SCG that the relationship between SCG and Wine Vibes had terminated:

From: Kyle Gorman <kgorman@scgwest.com>
Sent: Wednesday, April 20, 2022 2:46 PM
To: Travis Walla <twalla@legacycontractors.com>; Zach Walla <zwalla@legacycontractors.com>
Cc: Brandon Lehman <blehman@scgwest.com>
Subject: RE: SCGWest Construction Efforts

Travis,

Since SCGWest is no longer involved in the construction efforts, you will be coordinating with Waters Edge Wineries Corporate Headquarters.

Please contact them directly for approvals before moving forward.

15. Thereafter, Legacy was contacted on multiple occasions directly by Wine Vibes in an effort to move forward with the buildout. Pricing was finalized, and preconstruction efforts began. On April 28, 2022, Legacy and Wine Vibes entered into a construction contract (hereinafter "Construction Contract").

16. On April 26, 2022, counsel for SCG sent an email to Legacy demanding that Legacy not move forward with the buildout, citing the non-circumvention portion of the Agreement, which reads as follows:

II. NON-CIRCUMVENTION

a. Party will not in any manner attempt to circumvent or undermine SCG relationship with Wine Vibes, LLC, a Texas limited liability company, and Waters Edge Wineries Affiliates. Legacy shall not enter into any direct or indirect negotiations, communications, or transactions with, or solicit or accept any business from or with Wine Vibes, LLC and Waters Edge Wineries Affiliates, without the express prior written consent of SCG. Party expressly agrees and acknowledges that the purpose and intent of this Agreement is to prevent Legacy from circumventing SCG and/or sharing Confidential Information. The non-circumvention and non-solicitation covenants contained herein shall be effective and binding on Party for a period through the later of (i) three (3) years from the Effective Date, and (ii) one (1) year from the termination of any business relationship between SCG and Legacy.

b. Without limiting the generality of the foregoing, Party hereby agrees not to use or disclose to any third party any names, addresses, telephone numbers, fax numbers, or email addresses of any Introduced Party (whether acquired from SCG, the Introduced Party or a third party, and whether or not publicly available), except in a manner authorized by SCG in connection with the Projects. The same mirrored provisions shall apply to Party's disclosed Confidential Information.

c. SCG shall have the same remedies as provided in Section I.h. above with respect to any violation of the non-circumvention covenants contained in this Section II. The same mirrored provisions shall apply to Party's disclosed Confidential Information.

17. If Legacy were to honor SCG's demand, then Legacy would be in breach of the Construction Contract with Wine Vibes.

18. On May 13, 2022, SCG's counsel sent Legacy a draft form complaint purporting to have been filed in California Superior Court against Legacy. This complaint did not bear a cause number, was not file stamped, and to date, Legacy has not been served.

IV. COUNT I: DECLARATORY ACTION

19. Legacy incorporates as if set forth fully herein, paragraphs 1 – 18 above.

20. An actual, present, justiciable controversy exists between Legacy and SCG in that the parties disagree as to whether the Agreement is enforceable against Legacy to prevent Legacy from moving forward with the buildout.

21. SCG demands that Legacy cease all construction efforts, effectively demanding that Legacy breach the Construction Contract with Wine Vibes.

22. Legacy seeks a declaration from this Court that the Agreement is null and void for (1) lack of consideration, and (2) it was procured by fraudulent misrepresentations done by SCG.

23. Legacy also seeks to recover its reasonable and necessary attorneys' fees and costs, as authorized by the Agreement:

~~for performance. In the event of any dispute arising in any manner with respect to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs. This Agreement will be governed by and interpreted in accordance with the laws of the State of California.~~

V. PRAYER

WHEREFORE, Legacy respectfully requests the following from the Court:

- a. Declaration that the Confidentiality, Non-Compete, and Non-Circumvention Agreement is null and void;
- b. Award Legacy its attorneys' fees and costs; and
- c. Award Legacy all other relief to which it may be entitled.

Respectfully submitted,

Dated this 16th day of May 2022.

SW LEGAL SERVICE

A handwritten signature in black ink that reads "Shannon S. Walla". The signature is written in a cursive style and is positioned above a horizontal line.

Shannon S. Walla

TX State Bar No. 24081157

28410 Sycamore Falls Lane

Fulshear, Texas 77441

(281) 915-2366

swalla@swlegalservice.com